U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32372939

Date: JULY 17, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did it demonstrate that he met at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will summarily dismiss the appeal because it did not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision. 8 C.F.R. § 103.3(a)(1)(v).

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that

petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

The Petitioner stated he will continue to work in the United States as a musician. The Director concluded the Petitioner has not established that he has received a major, internationally recognized prize or award under 8 C.F.R. § 204.5(h)(3) and that the evidence in the record does not demonstrate that he meets any of the ten alternate criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), of which he must meet at least three.

On the Form I-290B, Notice of Appeal or Motion, the Petitioner only generally contends that "USCIS committed several errors of both fact and law" and requests that we determine that he merits "a national interest waiver as a matter of discretion." However, beyond general assertions, he does not identify, or even address, any specific error of fact or law. Further, the petition before us is based on an individual of extraordinary ability and not an individual applying for a national interest waiver.

Moreover, the subsequently filed appeal brief is virtually identical to the request for evidence response and does not explain why we should find these eligibility claims any more persuasive than the Director did. As he does not provide any additional evidence and does not specifically identify any erroneous conclusion of law or statement of fact in the unfavorable decision, we must summarily dismiss the appeal.

ORDER: The appeal is summarily dismissed under 8 C.F.R. § 103.3(a)(1)(v).